

MAY 10 2005

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Date:

May 10, 2005

By:



William F. Gadano, Registration No. 37,136

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

Steven M. Bessette

Atty. Ref.: 4380-87; Confirmation No. 3849

Appl. No. 09/340,391

TC/A.U. 1616

Filed: June 28, 1999

Examiner: Levy, Neil S.

For: SYNERGISTIC AND RESIDUAL PESTICIDAL COMPOSITIONS CONTAINING
PLANT ESSENTIAL OILS WITH ENZYME INHIBITORS

* * * * *

TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant(s) Appeal Brief in support of the Notice of Appeal filed December 10, 2004 and an Amendment After Final Rejection concurrently filed herewith. Please grant a **three (3) month** extension of time for entry of same. Please charge the Appeal Brief and Extension of Time fees (**small entity**) to Deposit Account 14-1140.

Steven M. Bessette
Appl. No. 09/340,391
May 10, 2005

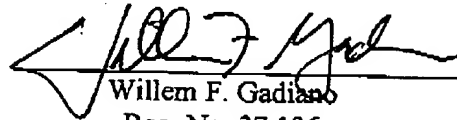
Atty. Docket No. 4380-87

To the extent necessary, please grant any further extension of time under 37 C.F.R.
1.136 deemed necessary. Please charge any shortage in fees due, or any excess fees paid,
to Deposit Account 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:


Willem F. Gadiano
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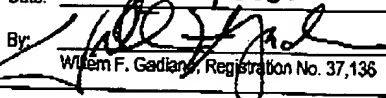
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Date:

May 10, 2005

By:


Willem F. Gadiano, Registration No. 37,136

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By:

William F. Gadiano, Registration No. 37,136

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCESIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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* * * * *

APPEAL BRIEFMail Stop Appeal Brief-Patents
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant herein appeals from the Examiner's final rejection of the pending claims. Appeal is timely and proper pursuant to 37 CFR § 1.191(a). This Appeal Brief is submitted in support of the Notice of Appeal filed December 10, 2004. Appellant concurrently files herewith an Amendment After Final Rejection in an effort to eliminate the issues on Appeal.

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REAL PARTY IN INTEREST

This application is assigned to EcoSmart Technologies, Inc., by assignment recorded on March 18, 2004, at Reel 014444, Frame 0214.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1, 6, 18, 19 and 24-26 are pending. No claims have been indicated as being allowable. The text of claims 1, 6, 18, 19 and 24-26 (as amended) are found in the APPENDIX A attached hereto.

STATUS OF AMENDMENTS

It is believed that all amendments filed in this case before May 10, 2005, have been entered. An amendment is being concurrently filed with this Appeal Brief to amend claims 1, 18, 19, 24, and 26 to address the grounds of rejection set forth in the final Office Action mailed June 11, 2004, from which this appeal was taken.

SUMMARY OF INVENTION

The claimed invention generally relates to a pesticidal composition comprising a pesticidally-acceptable carrier and a pesticidally-effective active ingredient, wherein the pesticidally-effective active ingredient consists of a pesticidally effective amount of at least one

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plant essential oil compound selected from the group consisting of benzyl alcohol, eugenol and phenyl ethyl alcohol, and a pesticidally effective amount of an enzyme inhibitor selected from the group consisting of piperonyl butoxide, N-(2-ethylhexyl)-bicyclo-(2,2,1)hept-5-ene 2,3-dicarboximide, and sesamex.

ISSUES

Whether the rejection of claims 1, 6, 18, 19 and 24-26 should stand in view of the Amendment After Final Rejection concurrently filed herewith.

GROUPING OF CLAIMS

Under 35 U.S.C. § 282, Appellant submits that the patentability of any one appealed claim is not solely predicated on the patentability of the remaining appealed claim(s). Each claim of this patent application is separately patentable and upon issuance of a patent will be entitled to a separate presumption of validity. Pursuant to 37 C.F.R. § 1.192(5), each pending claim(s) will separately stand or fall in this appeal.

THE ARGUMENT

Claims 1, 6, 18, 19 and 24-26 on appeal have been rejected under 35 U.S.C. §§ 112, first and second paragraphs and under 35 U.S.C. § 103(a). Appellant's arguments have been set forth in detail in the concurrently filed Amendment After Final Rejection, which is believed to place the above-captioned patent application in condition for allowance, and thereby obviating the need for this appeal. As such, Appellant respectfully requests that the Board reverse the pending

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rejections.

CONCLUSION

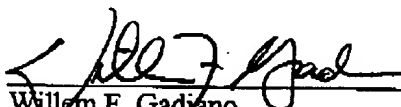
In view of the foregoing arguments, Appellant submits that there exists no factual basis to support a conclusion that the presently claimed subject matter is unpatentable. It is respectfully submitted that the rejection of the claims on appeal is in error and should be reversed.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. The Commissioner is hereby authorized to charge any deficiency in the small-entity fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:


William F. Gadiano
Reg. No. 37,136

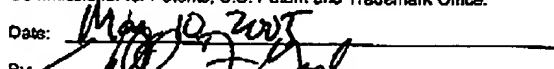
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APPENDIX A

1. A pesticidal composition comprising:
a pesticidally-acceptable carrier and a pesticidally-effective active ingredient,
wherein the pesticidally-effective active ingredient consists of
a pesticidally effective amount of at least one plant essential oil compound
selected from the group consisting of benzyl alcohol, eugenol and phenyl ethyl alcohol, and
a pesticidally effective amount of an enzyme inhibitor selected from the group
consisting of piperonyl butoxide, N-(2-ethylhexyl)-bicyclo-(2,2,1)hept-5-ene 2,3-dicarboximide,
and sesamex.
6. A method for killing or controlling pests, comprising:
applying to a locus where killing or control of pests is desired an effective amount
of the composition of claim 1.
18. The pesticidal composition of claim 1, wherein the plant essential oil compound is
benzyl alcohol and the enzyme inhibitor is piperonyl butoxide.
19. The pesticidal composition of claim 1, wherein the plant essential oil compound is
benzyl alcohol and the enzyme inhibitor is N-(2-ethylhexyl)-bicyclo-(2,2,1)hept-5-ene 2,3-
dicarboximide.
24. The pesticidal composition of claim 1, wherein the plant essential oil is benzyl
alcohol and the enzyme inhibitor is sesamex.
25. The pesticidal composition of claim 18, wherein the plant essential oil compound
and enzyme inhibitor are present in a ratio of 1:2 parts by weight.

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26. The method of claim 6, wherein the pest is a cockroach.